

Testimony of Stuart Bell
Bloomberg Financial Markets
on Public Access to Market Data
Before the Committee on Financial Services
Subcommittee on Capital Markets, Insurance,
and Government Sponsored Enterprises

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Introduction. Mr. Chairman and Members of the Subcommittee. My Name is Stuart Bell, and I am pleased to have the opportunity to testify on behalf of Bloomberg Financial Markets regarding the critical issue of access to market data.

Bloomberg Financial Markets provides multimedia, analytical and news services to more than 150,000 terminals used by 350,000 financial professionals in 100 countries worldwide. Bloomberg tracks more than 135,000 equity securities in 85 countries, more than 50,000 companies trading on 82 exchanges and more than 406,000 corporate bonds. Our clients include most of the world's central banks, as well as institutional investors and broker-dealers, commercial banks, and U.S. government offices and agencies. Bloomberg News is syndicated in over 350 newspapers, and on 550 radio and television stations worldwide. Bloomberg publishes seven magazines around the world. Bloomberg Press publishes books on financial subjects for the investment professional and non-professional reader.

Bloomberg Financial Markets also provides the services of Bloomberg Tradebook, an electronic agency broker serving institutional investors and other broker-dealers. Bloomberg Tradebook is one of the largest electronic communications networks (ECN), regularly matching orders in excess of 100 million shares daily. Bloomberg Tradebook counts among its clients many of the nation's largest institutional investors. Bloomberg Tradebook and other ECNs have thrived for the simplest of reasons – we are a market solution to our customers's market needs.

In short – as both a vendor and an ECN – Bloomberg is acutely aware of the critical importance to investors and the markets of access to market data. Chairman Oxley and others have often accurately referred to this data as the “oxygen” of the market. A brief look at the history of market data regulation underscores the need for strong congressional oversight and action to ensure the availability of that oxygen and the development of logical market data policy that serves investors and markets.

Securities Acts Amendments of 1975. Before the 1970's, no statute or SEC rule required self-regulatory organizations (SROs) to disseminate market information to the public or to consolidate information. SROs decided what information to disseminate, to whom to disseminate, and what fees to charge. Indeed, the NYSE, which operated the largest stock

market, severely restricted public access to market information, particularly its quotations. Markets and investors suffered from this lack of transparency.

The Congress responded by enacting the Securities Acts Amendments of 1975. This Act emphasized the need for accurate, up-to-the-second market information to guide those who trade in the U.S. securities markets. The Act also empowered the SEC to facilitate the creation of a national market system for securities, with market participants required to provide information for each security, which in turn was to be consolidated and disseminated into a single stream of information disseminated to the public.

At that time, the exchanges and the NASD perceived that the establishment and maintenance of publicly disseminated quotation and last sale data could most efficiently be accomplished by allowing combinations such as the Securities Industry Automation Corporation (SIAC) and Nasdaq to be the exclusive processors. The Congress, however, was by no means convinced that it was necessary or appropriate to endow the SROs, alone or in combination with one another, with a monopoly on data dissemination. While the Congress recognized that SEC action would be necessary to promote the creation of a composite quotation system and a consolidated last sale tape, it carefully avoided endorsing a monopoly approach.

Indeed, the Congress clearly recognized the dangers of data-processing monopolies. The Congress warned the SEC to regulate the exclusive securities information processors as public utilities and to guard aggressively against all manner of abuse, pointing to the risk of antitrust problems if such regulation were not effectively applied:

The Committee believes that if economics and sound regulation dictate the establishment of an exclusive central processor for the composite tape or any other element of the national market system, provision must be made to insure that this central processor is not under the control or domination of any particular market center. Any exclusive processor is, in effect, a public utility, and thus it must function in a manner which is absolutely neutral with respect to all market centers, all market makers, and all private firms. *Securities Acts Amendments of 1975*, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 11 (1975).

The Congress clearly envisioned that securities information processors would be regulated in the same strict way as public utilities are regulated so as to avoid abuse and undue expense and to increase price transparency. Monopolies were not the Congress's preferred course and it was careful to insist that they be strictly controlled if permitted to exist at all.

The Current Challenge. At present, most SROs are non-profit organizations. The NASD, however, has largely completed its privatization of Nasdaq and it may well be that other privatizations will follow. Under the cover of a non-transparent bureaucracy, non-profit SROs have exploited the opportunity to subsidize their other costs (*e.g.*, costs of market operation, market regulation, market surveillance, member regulation) through market information fees.

For all SROs, the incentive will be strong to exploit this government-sponsored monopoly over market data by charging excessive rates for market data and using those monopoly rents to subsidize their competitive businesses. Indeed, shareholders of these now for-profit entities will effectively demand that market data charges remain excessive.

Continuing and augmenting this unfair monopoly will hurt investors and compromise the efficiency of the markets in many ways. Investors will be forced to pay excessive monopoly rents for market data. Investors will be denied a level playing field that would otherwise exist in the absence of those monopoly subsidies. Investors will also lose as major market players – comfortable as government-sponsored monopolies – fail to innovate, leaving American markets vulnerable to future offshore competition.

A Possible Solution. The Congress built into Section 11A of the Securities Exchange Act of 1934 a recognition that SROs, when they act as exclusive securities processors, enjoy a monopoly the Commission should carefully regulate. How can the Congress and the SEC oversee this public utility function without committing substantial resources to ratemaking? One way would be to limit the category of service for which the regulated rates could be charged. One readily available way to do that would be to require the SROs to gather data concerning quotations entered and transactions executed through use of their facilities, and provide this data at the cost of gathering it to third parties who would integrate the data pursuant to minimum standards set by the Congress or the SEC and sell it to the public at competitive prices.

The data-integration and dissemination functions currently performed by SIAC, OPRA and Nasdaq no longer need to be monopoly businesses, if indeed they ever did. There is no reason why any number of data aggregators could not distribute composite quotation data and consolidated transaction data in competition with SIAC, OPRA and Nasdaq if they were willing to do so in compliance with minimum standards. Indeed, it is likely that competition among data aggregators would result in a better, more reliable product than is available today from SIAC, OPRA and Nasdaq. It would stand to reason that competition in this sector would have a cleansing effect and would spur innovation and improvement.

Giving SROs monopoly status and regulating them as public utilities may have made sense when the Congress enacted the 1975 Amendments, but the need for a monopoly solution to much of the market's needs is now no longer present in light of dramatic advances in technology and reductions in communications costs. Today, the securities business is turning more frequently to competing, redundant electronic systems instead of monopolistic, unitary service providers. The reduction in communications costs makes that a sound choice today. Monopolies are not needed for most, if indeed any, of the functions related to the collection and dissemination of market information. Given the reduced cost of communications technology, it is now cost-effective for private competing systems that provide market information to maintain duplicative, redundant information systems.

A Cost Based System of Gathering and Disseminating Market Information. There are a number of more modest steps that would enhance transparency and protect investors by moving us toward a system of market data fees based solely on the cost of data collection and

dissemination, and not designed as a means of defraying other costs of operating or regulating an exchange or other market. These include:

- * Create an accurate, updated and comprehensive database of market data prices, terms, conditions, policies, procedure, pilots and administrative interpretations of each exchange.
- * Encourage exchanges to standardize market data terms, conditions, policies and procedures as much as possible.
- * Encourage exchanges to simplify the accounting, auditing and reporting of market data usage.
- * Develop criteria for evaluating exchange fee proposals as required by Section 11A of the Securities Exchange Act of 1934, which calls for fair, reasonable and non-discriminatory application of fees for market data.

Even adoption of the approach taken in proposed Rule 11Ab2-2, originally published by the SEC in 1975, would be beneficial. As proposed in 1975, Rule 11Ab2-2 would have required registered securities information processors to file updated financial statements in annual amendments to their Forms SIP. The SEC suggested that the filings required under the proposed rule could include:

- * a complete listing of fees charged for market data;
- * the number of users participating in each of the current fee programs; and
- * audited financial statements that would set forth revenues (including an itemized listing of revenues attributable to different fees), expenses and distributions.

An Informed Consumer is the Best Policeman. The SEC has rightly placed considerable emphasis on best execution and price improvement. The best policeman on these issues, however, is not the government and not the SROs. It is the consumer. If armed with timely and inexpensively available market information, consumers will be able to make informed choices and to insist that technology be put to work to help them. If fees for market data are artificially high, that will tend to discourage widespread dissemination of market data and the core goal of promoting price transparency will be seriously undermined.

TRACE and NRMSIR – Cautionary Tales. Regulatory developments in the corporate and municipal bond markets underscore the absence of an economically efficient policy on market data that would benefit markets and investors and raise concerns regarding the possible resolution of these issues in the equities market.

A little over a year ago, the NASD, operating through its wholly owned subsidiary, Nasdaq, filed a proposed rule change with the SEC to create a corporate bond Trade Reporting and Comparison Entry Service (the TRACE proposal.) As approved a few weeks ago, the

proposal creates a government-sponsored monopoly in bond data – just when Nasdaq has been transformed into a privately owned for-profit entity. Under the TRACE proposal, the SEC has granted the NASD an exclusive franchise by mandating, with only limited exceptions, that all NASD members report their corporate bond transactions to the NASD. The proposal as adopted would permit others to compete with NASD/Nasdaq – but not on a level playing field. NASD/Nasdaq would get market data free by law. Everyone else has to pay for it.

Is a de facto monopoly in this field necessary? The answer is a resounding no. Credible, highly capitalized market participants are ready to consolidate bond market data if competition is permitted to replace a government-sponsored monopoly in this arena. Numerous market participants filed comment letters asserting that open network technology has made it possible to collect and disseminate price information without a central monopoly provider. Indeed, Bloomberg and the Philadelphia Stock Exchange have actually made such a proposal. An open-architecture, competitive model would foster competition and innovation, minimize the need for regulatory oversight of fees and eliminate other problems inherent in TRACE.

The current debate over the nationally recognized municipal securities information repository (NRMSIR) raises similar troubling issues. The Municipal Securities Rulemaking Board (MSRB) recently proposed, for example, that all the NRMSIRs give to the MSRB all the data they had independently gathered, sorted and analyzed. While billed as a voluntary initiative, it is disconcerting that the MSRB would argue that compilations of data gathered after enormous expenditures of private time and money should be considered free for the taking.

In summation, the current market data policy in the United States does not promote competitive market forces, which would benefit investors and markets. On the equity side, we promote a government-sponsored monopoly with little effective ratemaking oversight, despite changes in technology that make monopolies unnecessary and despite the intentions of those monopolies to become for-profit enterprises. Indeed, on the corporate bond side, we are creating a government-sponsored monopoly despite the clear presence of private sector market participants that stand ready to compete to provide corporate bond pricing information. On the municipal bond side, where private sector actors have compiled valuable data at great expense over a period of years, the MSRB argues that data should be provided to them gratis, despite the fact that – unlike compilations in the equity markets and future compilations of corporate bond data if TRACE is implemented – these compilations have been created without the benefit of a government fiat mandating that others provide the data. Indeed, the creation of these municipal bond compilations shows that, even in the absence of governmental compulsion, market forces will drive the gathering and disseminating of market data to those who need or want it.

Conclusion. The Securities Acts Amendments of 1975 crafted a regulatory and legal regime for a world without on-line brokerages, a world without ECNs, a world without modern communications systems, a world where exchanges were content to serve as not-for-profit public utilities. While we believe the model the Congress put forth in 1975 is in many ways fundamentally sound, it is clear that bedrock changes in our markets over the past quarter century demand a thorough congressional reexamination of the 1975 Amendments, including the provisions on market data.

We believe that competitive provision of market data should be encouraged to the maximum extent possible. The greater the transparency, the greater the opportunity to unleash market forces for the benefit of investors. At a minimum, we believe fees for market data should be based upon the direct costs of gathering and disseminating the data and that self-regulatory organizations that levy fees should provide regular, reliable and updated financial data setting forth revenues and expenses as a basis for the fees levied on users.
